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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 286

LORENZO ALLIS, APPELLANT,

vs.

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED OCTOBER 23, 1875.

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1 United States circuit court, district of Minnesota.

THE NORTHWESTERN MUTUAL LIFE-INSURance Company
vs.
LORENZO ALLIS, MARY C. ALLIS, HIS WIFE, Mary C. Allis De Con, and Franklin De Con, her husband, Merrill Ryder, John Parker, Charles Gentsch, Reuben Warner, W'm Shane, J. H. Pomeroy, H. F. E. Vitt, John Gebhardt, and Gebhardt, his wife, all of the city of Saint Paul, in the State of Minnesota, and Franklin O. Day. } In equity.

Be it remembered that on this 21st day of December, A. D. 1874, came the Northwestern Mutual Life-Insurance Company above named, by Geo. L. and Cha's E. Otis, esquires, its solicitors, and filed in the clerk's office of said court its bill of complaint in the words and figures following, to wit:

To the judges of the circuit court of the United States for the district of Minnesota, sitting in equity:

The Northwestern Mutual Life-Insurance Company, a corpora-
2 tion created, constituted, and organized under the laws of the State of Wisconsin, and a citizen of said State of Wisconsin, brings this its bill against Lorenzo Allis and Mary C. Allis, his wife, Mary C. Allis De Con, and Franklin De Con, her husband, Merrill Ryder, John Parker, Charles Gentsch, Reuben Warner, William Shane, J. H. Pomeroy, and H. F. E. Vitt, John Gebhardt, and Gebhardt, his wife, all of the city of Saint Paul, in the State of Minnesota, and Franklin O. Day.

And thereupon your orator complains and says that on or about the twelfth day of December, A. D. 1868, Lorenzo Allis, of the city of S't Paul, in said district, one of the defendants in this suit, to secure the payment of the sum of ten thousand dollars with interest, did make and execute under his hand and seal, and deliver unto your orator a bond, bearing date on that day, in the penal sum of twenty thousand dollars, lawful money of the United States, with a condition thereunder written, that if the said defendant, Lorenzo Allis, his heirs, executors, administrators, or any of them, should well and truly pay or cause to be paid unto your orator, or to its certain attorney, successors, representatives, or assigns, the just and full sum of ten thousand dollars at the expiration of five years from the date of said bond, to wit,
3 the said 12th day of December, A. D. 1868, with interest thereon until paid, at the rate of eight per cent. per annum, payable semi-annually on the first day of May and of November, in each and every year, both principal and interest payable at the office of your orator in the city of Milwaukee, in the State of Wisconsin; and should on or before the first day of May, in each and every year, procure and deliver to your orator at its office in the said city of Milwaukee, duplicate receipts of the proper officers for the payment of all taxes levied or assessed on the premises covered by the mortgage hereinafter mentioned, for the preceding year; and in case of the non-payment of any sum of money or interest thereon, or any taxes or insurance money which might become payable according to the covenants of the mortgage hereinafter

described, executed by the defendants, Lorenzo Allis and Mary C. Allis, his wife, to your orator, then and in such case the whole amount of said principal sum should at the option of your orator, its successors, representatives, or assigns, be deemed to have become due and payable, and the same, with interest thereon at the rate aforesaid, should thereupon be collectible in a suit at law, or by a foreclosure of the said mortgage, in the same manner as if the whole of said principal sum had been
4 made payable at the time when any such failure in any payment should occur as aforesaid, and if on such election being made, the said Lorenzo Allis should then pay the whole sum above mentioned, and interest thereon as aforesaid, and the sums, if any, which should become due and payable according to the terms of said mortgage, without any fraud or other delay, then the said bond was to be void and of no effect, otherwise to remain in full force and virtue.

And said bond further provides that no payment of the principal of said bond should be deemed valid except upon the joint receipt of the president and secretary of the said company, as in and by said bond, ready to be produced as this court shall direct, reference being thereunto had, will appear.

And the said Lorenzo Allis and Mary C. Allis, his wife, two of the defendants in this suit, to secure the payment of said sum of money, together with the interest which should accrue thereon, did, on the same day, duly execute under their hand and seal and deliver unto your orator a mortgage, bearing date on the said 12th day of December, A. D. 1868, by which the said defendants last named did grant, bargain, sell, alien, release, convey, and confirm unto your orator, its successors and assigns forever, all of the following-described real estate situate and lying in the county of Ramsey, and State of Minnesota, known
5 and designated as follows, viz:

The south one-third (⅓) of lots number thirteen (13) and fourteen (14) in block number twelve (12), in Saint Paul proper, excepting therefrom the east eight (8) feet of said lot number fourteen (14), heretofore deeded to the city of S't Paul, together with the privileges and appurtenances to the same belonging, and all the rents, issues, and profits which may arise or be had therefrom; to have and to hold the same to your orator, its successors and assigns, forever; provided always, and said mortgage was therein declared to be upon condition nevertheless, that if the said Lorenzo Allis, his heirs, executors, or administrators, should pay or cause to be paid to your orator, its successors or assigns, the just and full sum of ten thousand dollars at the expiration of five years from the date of said mortgage, to wit, the 12th day of December, 1868, with interest thereon until paid, at the rate of eight per cent. per annum, payable semi-annually on the first day of May and November in each and every year, both principal and interest payable at the office of your orator in the city of Milwaukee in said State of Wisconsin; and should on or before the first day of May in each and every year procure and deliver to your orator at its office in Milwaukee aforesaid, duplicate receipts of the proper officers for the payment of all taxes levied
6 or assessed on said premises for the preceding year, according to the conditions of the aforesaid bond, and should moreover pay annually to the proper officers all taxes which should be assessed on the said real estate; and if the said Lorenzo Allis, his heirs, executors, administrators, or assigns, should keep the insurance on the policy assigned, pursuant to a certain covenant in the said mortgage contained, in and by which covenant it was among other things provided that the said Allis should keep the building or buildings at the date of said mort-

gage standing, or which might thereafter be erected on said mortgaged premises, insured against loss or damage by fire in some solvent incorporated insurance company, so long as the moneys by said mortgage secured should be unpaid, to the amount of at least ten thousand dollars, and keep the policy or policies of such insurance assigned to your orator, and in case of failure therein your orator might effect an insurance to the amount aforesaid, and the premium and expenses of such insurance should be immediately paid to your orator, and should, unless so paid, be added to and deemed part and parcel of the moneys by said mortgage secured; then the said mortgage and the said bond should cease and be null and void.

7 But in case of the non-payment of any sum of money, either principal, interest, insurance-money, or taxes, at the time or times when the same should become due agreeably to the conditions of the said mortgage or of the said bond, or any part thereof, or in case of any neglect or refusal to keep said building insured, or the policy or policies assigned as aforesaid, then, in such case, the whole amount of said principal sum should, at the option of your orator, its successors, representatives, or assigns, be deemed to have become due, and the same, with the interest thereon at the rate aforesaid, should thereupon be collectible in a suit at law or by foreclosure of the said mortgage in the same manner as if the whole of said principal sum had been made payable at the time when any such failure in any payment should occur as aforesaid; and it should be lawful in such case for your orator, its successors, representatives, or assigns, to grant, sell, and convey the said real estate with the appurtenances thereunto belonging, at public auction or vendue, and on such sale to make and execute to the purchaser or purchasers, his, her, or their assigns forever, good and sufficient deeds of conveyance in the law, pursuant to the statute in such case made and provided.

8 And in and by the said mortgage the said Lorenzo Allis and Mary C. Allis, his wife, did further covenant to and with your orator, that in case of the foreclosure of the said mortgage they would pay to your orator reasonable and customary solicitor's fees in addition to the taxable costs in the foreclosure suit; and which said mortgage was duly acknowledged by the said defendants last named, and was afterwards, on the 17th day of December, A. D. 1868, duly recorded in the office of the register of deeds for said county of Ramsey, in book X of mortgages, on pages 176, 177, 178, and 179, as by the said mortgage ready to be produced as this court shall direct, or the record thereof, will appear.

And your orator further shows that the defendant, Lorenzo Allis, has not paid the interest on said bond, nor any part thereof, except the interest that accrued thereon up to the first day of November, A. D. 1873; that the said Allis made default in the payment of interest that came due on said bond and mortgage on the 1st day of May, A. D. 1874, amounting to four hundred dollars, and still is in such default, and also made further default in the payment of the half yearly installment of interest that came due on said bond and mortgage on the 1st day

9 of November, 1874, amounting to the further sum of four hundred dollars, and still is in such default, and both said installments are still due and wholly unpaid.

And your orator further shows that the defendant, Lorenzo Allis, has not paid the taxes and assessments on said premises; that the taxes for 1873 have not been paid in full; that the sum of seventeen $\frac{97}{100}$ dollars of the taxes for said year last named being unpaid and delinquent

on the north seventy-five feet of said premises was sold at the delinquent tax sale in December, 1874, and prior to the filing of your orator's bill, and bid off by one John Gebhardt, who acquired and still has a tax title thereto, and the title of your orator placed in jeopardy thereby.

And your orator further says that besides said installments of interest, the whole principal sum of ten thousand dollars secured in and by the said bond and mortgage has become due and is wholly unpaid: that the same is now due and payable according to the condition of said bond and mortgage, together with interest thereon, at eight per cent. per annum for and since November 1st, A. D. 1873.

And your orator further shows that the reasonable and cus-
10 tomary solicitor's fees in this suit, besides the taxable costs herein in the sum of two hundred dollars, and your orator claims the same as in the said mortgage provided.

And your orator further shows that the said Mary C. Allis described herein as the wife of the defendant, Lorenzo Allis, and the said other Mary C. Allis herein described, is the wife of the defendant, Franklin De Con, and a daughter of the said Lorenzo. That by reason of said default the estate of your orator in the said mortgage premises hath become and is absolute in law, subject only to the equity of redemption in this court; and he further says that the said Lorenzo Allis, or those claiming under him since the time of the making and executing said mortgage, possessed and enjoyed and does still possess and enjoy all and singular the said mortgage premises, and have at all times received and still does receive the rents, issues, and profits thereof. That no proceedings at law or otherwise have been had by it or by any other person or pe sons for the recovery of said sums of money mentioned in said bond and mortgage, or any part thereof.

And your orator further shows that the defendants, Mary C.
11 Allis, Mary C. Allis De Con, Franklin De Con, Merrill Ryder, John Parker, Charles Gentsch, Reuben Warner, William Shane, J. H. Pomeroy, H. F. E. Vitt, John Gebhardt, and Gebhardt, his wife, and Franklin O. Day, as it is informed and believes, have or claim to have, respectively, some interest in or lien upon the said mortgage premises, or some part thereof, either as purchaser, incumbrancer, or otherwise, which respective lien or interest, if any, has accrued subsequently to the lien of your orator's aforesaid mortgage.

Your orator therefore asks the aid of the court in the premises and that the said Lorenzo Allis and Mary C. Allis, his wife, Mary Alice De Con, and Franklin De Con, her husband, Merrill Ryder, John Parker, Charles Gentsch, Reuben Warner, William Shane, J. H. Pomeroy, H. F. E. Vitt, John Gebhardt, and Gebhardt, his wife, and Franklin O. Day, the defendants in this suit, may appear before the honorable judges of the circuit court above named, and true, full, and perfect answers make to this your orator's bill of complaint, according to the rules and practice of this court, but without oath, an answer under oath from said defendants or either of them being hereby waived, and that the usual decree may be made for the sale of the said mortgage premises, and for the payment of the amount due your orator for
12 principal and interest due upon the said bond and mortgage, and of the aforesaid taxes and penalties, and of your orator's cost of suit, including said sum of two hundred dollars solicitor's fees, as in said mortgage provided, and the proceeds of the sale of the said mortgage premises be brought into court and applied, so far as they will pay the same, in payment of your orator's said debt and costs, taxes,

interest, penalties, and solicitor's fees, and that your orator have judgment against the said Lorenzo Allis for any deficiency. And that the defendants above named and all persons claiming under them, or either or any of them, subsequent to the commencement of this suit, and all other persons having liens by mortgage, judgment, or decree, or otherwise upon said mortgage premises, or any part thereof, subsequent to the said mortgage of your orator either as purchaser, incumbrancer, or otherwise, may be barred and foreclosed of and from all equity of redemption, and claim of, in and to the said mortgage premises, and every part thereof, with the appurtenances, and that your orator may have such other or further relief as the nature of the case may require, and as to this court shall seem meet and proper, and agreeable to equity.

13 May it please your honor to grant unto your orator the most gracious writ of subpœna of the United States of America to be directed to the said Lorenzo Allis, Mary C. Allis his wife, Mary C. Allis De Con, and Franklin De Con her husband, Merrill Ryeder, John Parker, Charles Gentsch, Reuben Warner, William Shane, J. H. Pomeroy, H. F. E. Vitt, John Gebhardt, and Gebhardt his wife, and Franklin O. Day, therein commanding them and each of them, at a certain day and under a certain penalty therein to be specified, personally to be and appear before your honor in this honorable court, and then and there to answer all and singular the premises, and to stand to and abide by such order and decree therein as to your honor shall seem meet, and your orator ever will pray, &c.

GEO. L. and CHA'S E. OTIS.
Solicitors for Complainant.

GEO. L. OTIS,
Of Counsel for Complainant.

To H. E. Mann, esq., clerk of the circuit court within named:

Please issue subpœna as prayed in the within bill against the defendants therein named, returnable on the first Monday in February, 1875.

GEO. L. and CHA'S E. OTIS,
Sol'rs for Complainant.

14 Whereupon a writ of subpœna was duly issued out of said court, under seal thereof duly tested, and is with the return thereon indorsed in the words and figures following, viz:

UNITED STATES OF AMERICA,
District of Minnesota, ss:

The President of the United States of America, to Lorenzo Allis, Mary C. Allis his wife, Mary C. Allis De Con, and Franklin De Con her husband, Merrill Ryder, John Parker, Charles Gentsch, Reuben Warner, William Shane, J. H. Pomeroy, H. F. E. Vitt, John Gebhardt, and Gebhardt his wife, and Franklin O. Day, greeting:

You are hereby commanded to appear before our judges of our circuit court of the United States of America for the district of Minnesota, at Saint Paul, in said district, on the first Monday in the month of February next, to answer the bill of complaint of the Northwestern Mutual Life-Insurance Company this day filed in the clerk's office of said court in said S't Paul, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of Minnesota to execute.

15 Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at S't Paul aforesaid, this 21st day of December, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninty-ninth year.

[SEAL.] H. E. MANN,
Clerk.

Memorandum.

The within-named defendants are notified that unless they enter their appearance in the clerk's office of said court, at S't Paul aforesaid, on or before the day to which this writ is returnable, the complaint will be taken against them as confessed, and a decree entered accordingly.

[SEAL.] H. E. MANN,
Clerk.

GEO. L. and C. E. OTIS,
Plaintiff's Solicitors.

DISTRICT OF MINNESOTA, *ss:*

I hereby certify that I served the within writ on the within-named Lorenzo Allis, and Mary C. Allis, his wife, Mary C. Allis De Con, and Franklin De Con, her husband, Merrill Ryder, John Parker, Reuben Warner, William Shane, J. H. Pomeroy, H. F. E. Vitt, John Gebhardt, and Gebhardt, his wife, personally, by handing to and leaving with each of them a true copy hereof, at Saint Paul, in said
16 district, Dec. 26, 1874, and served the same on the within-named Cha's Gentsch, by leaving a true copy hereof at his last usual place of abode, with D'r Hagan, a person of suitable age and discretion, at S't Paul, in said district, Dec. 26, 1874; and I do further certify that I have made diligent search for the within-named Franklin O. Day, and cannot find him in this district.

R. N. MCLAREN,
U. S. Marshal.

Fees: Service, $26.00; horse and buggy, $2.50—$28.50.

And afterwards, to wit, at rules held at the clerk's office of said court on the 4th day of January, 1875, the following proceeding, among others, was had, viz:

THE NORTHWESTERN MUTUAL LIFE-INSURANCE Company
vs.
LORENZO ALLIS, AND MARY C. ALLIS, HIS wife, John Gebhardt and wife, et al.

And now come the defendants, John Gebhardt and wife, by Jacob Mainzor and Cha's Bryant, esquires, their solicitors, on whose motion it is ordered that the appearance of the said defendants be, and the same is hereby, entered.

17 And afterwards, to wit, on the 1st day of February, A. D. 1875, came the defendant John Gebhardt and wife, by Jacob Mainzor and Charles G. Bryant, esquires, their solicitors, and filed in the clerk's office of said court their joint and several answer to the plaintiff's bill of complaint, in the words and figures following, viz:

THE NORTHWESTERN MUTUAL LIFE-INSURance Company, a corporation created, constituted, and organized under the laws of the State of Wisconsin, complainant,

vs.

LORENZO ALLIS, AND MARY C. ALLIS, HIS WIFE, Mary C. Allis De Con, and Franklin De Con, her husband, Merrill Ryder, John Parker, Charles Gentsch, Reuben Warner, W'm Shane, J. H. Pomeroy, H. F. E. Vitt, John Gebhardt, and Anna Gebhardt, his wife, et al., defendants.

The joint and several answer of John Gebhardt, and Anna Gebhardt, his wife, to the bill of complaint of the above-named complainant.

These defendants, now and at all times hereafter saving and reserving to themselves, and each of them, all benefit and advantage of exceptions which can or may be had or taken to the many errors, un-
18 certainties, and other imperfections in said complainant's bill of complaint contained, for answer thereto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to answer unto, these defendants, answering, say that on the first day of April, eighteen hundred and seventy three, Lorenzo Allis, one of the defendants to the bill of complaint of said complainant, executed under his hand and seal, in due form of law, an instrument in writing, known as a lease, by which said Lorenzo Allis, defendant aforesaid, demised, leased, and let unto Ben Endrehs, for the consideration named in said lease, for the period of four years from and after the first day of April, A. D. eighteen hundred and seventy-three, the following premises, that is to say, the westerly 28 feet of the southerly one-third of lot thirteen (13) in block twelve (12) of Saint Paul proper, according to the plat thereof on record in the office of the register of deeds of the county of Ramsey, in the State of Minnesota, and having a front of 28 feet on Fifth street, and a depth of fifty feet therefrom, part of the same premises mentioned in complainant's bill of complaint contained.

And defendants aver that by the terms of said lease the said
19 Endrehs, his heirs, executors, administrators, and assigns, on the payment of the rent therein and thereby stipulated, that is to say, by the payment of $200.00 for the first year and $300.00 for each of the remaining years, in equal quarterly installments, in advance, for each quarter, for and during the term of said lease, at the office of said Allis, then, and in that case, the said Ben Endrehs, his heirs, executors, administrators, and assigns, should, at the expiration of said term, have the privilege of removing from said premises the buildings situated thereon.

And these defendants aver that said Ben Endrehs, since the execution of said lease, and on the 11th day of February, A. D. 1874, departed this life, leaving the defendant, Anna Gebhardt, (referred to in plaintiff's bill of complaint as the wife of the defendant John Gebhardt), his widow, and Mary Endrehs, minor child and heir of the said Ben Endrehs, and the child of this defendant, Anna Gebhardt, by the said Endrehs, in possession of said leasehold premises.

And defendants aver that thereafter, and on the 22d day of October, A. D. 1874, the said widow of said Ben Endrehs intermarried with the

defendant herein, the said John Gebhardt, and that from the decease
of the said Endrehs the defendant Anna Gebhardt, wife of the
20 defendant John Gebhardt, together with said minor child, have
continued to occupy said leasehold premises as the widow and minor child of said Ben Endrehs, deceased, as a homestead, under and by virtue of section one of the law relating to homestead exemption in the State of Minnesota.

These defendants aver that said Ben Endrehs, deceased, was, when living, entitled to the benefits of said act, and that his said widow, one of the defendants herein, has continued, without interruption, to occupy the said premises, and that said minor child has in like manner occupied the said premises, and is now under the age of twenty-one, to wit, of the age of thirteen years.

And the defendants, further answering, aver that said lease is in full force and virtue, and that the several conditions thereof have been fully kept and performed; and that the right granted in said lease to remove the buildings therefrom at the termination thereof belongs to these defendants; that the same has been ratified by the said defendant Lorenzo Allis, and confirmed to them by accepting the rents from these defendants, according to the terms of said lease; of all of which acts of the said Lorenzo Allis and the defendant Mary C. Allis, wife of said Lorenzo
Allis, had full knowledge and notice.

21 And the defendants, further answering, and by way of setting up the interests of the defendant John Gebhardt in said premises, admit that on the sixteenth day of December, A. D. 1874, at a public sale of lands in Ramsey County, for the sale of lands delinquent therein for the taxes of a date prior thereto, that is to say, for the year 1873, the defendant, J. M. Gebhardt, meaning the same the said John Gebhardt, defendant in complainant's bill of complaint, became the purchaser of the north seventy-five feet of said premises for the sum and amount stated in the bill of complaint, that is to say, seventeen $\frac{07}{100}$ dollars; and that said defendant, John Gebhardt, now holds the auditor's certificate therefor, which said certificate of sale is duly recorded in Book 66 of deeds, page 7, in the office of the register of deeds for the county of Ramsey aforesaid, ready to be exhibited as this court may order.

And these defendants, further answering for themselves the complainant's bill of complaint, admit, as in said bill set out, that the lease herein set up from the defendant, Lorenzo Allis, and the incumbrance on said premises thereby created, is subsequent to the lien of the mortgage in the bill of complaint set out.

But these defendants aver that said taxes paid by the defend-
22 ant, John Gebhardt, as set up in this answer, is a just and proper
charge on said premises paramount to any claim of said complainant therein, together with the interest and penalty thereon, by virtue of the statute of the State of Minnesota entitled "An act to provide for the assessment and collection of taxes," approved March 9, 1874.

And these defendants say that they have no knowledge of the several other matters and things in complainant's bill set up, except the knowledge derived from the bill itself, and cannot deny any of the matters therein contained, and, so far as they know or are informed, the same are true.

And these defendants, having answered every matter, cause, or thing in the said complainant's bill of complaint contained, material or necessary for these defendants to make answer unto, to the best of their knowledge or belief of these defendants, all of which matters and things

these defendants are willing to aver, maintain, and prove, as this honorable court shall direct, humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOHN GEBHARDT,
ANNA GEBHARDT,
Defendants.
JACOB MAINZER and
CHA'S G. BRYANT,
Sol'rs for Defendants.

23 And afterwards, to wit, at rules held at the clerk's office of said court on the 1st day of February, 1875, the following proceeding among others was had, viz:

THE NORTHWESTERN MUTUAL LIFE-INSURance Company
vs.
LORENZO ALLIS, JOHN PARKER, ET AL.

And now comes the defendant, John Parker, by Messrs. Bigelow, Flandrau, and Clark, his solicitors, on whose motion it is ordered that the appearance of the said defendant be, and the same is hereby, entered.

And afterwards, to wit, at rules held at the clerk's office of said court on the 1st day of February, 1875, the following proceeding among others was had, viz:

THE NORTHWESTERN MUTUAL LIFE-INSURance Company
vs.
LORENZO ALLIS, MARY C. ALLIS, ET AL.

And now comes the defendants, Lorenzo Allis and Mary C. Allis, by Frederick Allis, esq., their solicitor, on whose motion it is ordered
24 that the appearance of the said defendants be, and the same is hereby, entered.

And afterwards, to wit, at rules held at the clerk's office of said court, on the 10th day of February, 1875, the following proceeding, among others, was had, viz:

THE NORTHWESTERN MUTUAL LIFE-INSURance Company
vs.
LORENZO ALLIS AND OTHERS.

And now comes the plaintiff, by Geo. L. and Cha's E. Otis, esquires, its solicitors, and it appearing that the subpœna in this cause was duly served on the defendants, Mary C. Allis De Con, Franklin De Con, her husband, Merrill Ryder, Reuben Warner, W'm Shane, J. H. Pomeroy, H. F. E. Vitt, and Charles Gentsch, on the 26th day of December, A. D. 1874, and none of said defendants having appeared, plead, answered, or demurred to the plaintiff's bill of complaint, and the time for pleading, answering, or demurring having expired, and the said defendants

and each of them being in default, on motion of said solicitors, it is ordered that the said default be, and the same is hereby, entered.

And, on like motion, it is further ordered that the plaintiff's bill of complaint be, and the same is hereby, taken as confessed and true as against said defendants and each of them.

25 And afterwards, to wit, on the 1st day of March, A. D. 1875, came the said plaintiff, by its solicitors, and filed in the clerk's office of said court its replication to the joint and several answer of John Gebhardt and Anna Gebhardt, two of the defendants, in the words and figures following, viz:

THE NORTHWESTERN MUTUAL LIFE-INSURance Company
vs.
LORENZO ALLIS AND MARY C. ALLIS, HIS wife, Franklin De Con and Mary C. Allis De Con, his wife, Merrill Ryder, John Parker, Charles Gentsch, Reuben Warner, Wm. Shane, Franklin O. Day, J. H. Pomeroy, Henry F. E. Vitt, John Gebhardt, and Anna Gebhardt, his wife, defendants. } In equity.

The replication of the Northwestern Mutual Life-Insurance Company, complainant, above named, to the separate answer of John Gebhardt and Anna Gebhardt, his wife, two of the defendants above named.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and
26 prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants John Gebhardt and Anna Gebhardt is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed, or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

GEO. L. and CHA'S E. OTIS,
Solicitors for Complainant.

And afterwards, to wit, at rules held at the clerk's office of said court on the 2d day of March, 1875, the following proceeding among others was had, viz:

THE NORTHWESTERN MUTUAL LIFE-INSURance Company
vs.
LORENZO ALLIS AND MARY C. ALLIS, HIS wife.

The said defendants, Lorenzo Allis and Mary C. Allis, his wife,
27 having been personally served with subpœna in this cause by the marshal on the 26th day of December, A. D. 1874, and the said

defendants having failed to plead, answer, or demur to the plaintiff's bill of complaint on file, and being in default in that regard, on motion of Geo. L. and Cha's E. Otis, esquires, plaintiff's solicitors, ordered, that the default of the defendants be and the same is hereby entered.

And on like motion it is further ordered that the plaintiff's bill of complaint herein be and the same hereby is taken as confessed and true as against the said defendants and each of them.

And afterwards, to wit, at rules, held at the clerk's office of said court, on the 7th day of June, 1875, the following proceeding, among others, was had, viz:

THE NORTHWESTERN MUTUAL LIFE-INSURance Company
vs.
LORENZO ALLIS ET AL.

And now comes the plaintiff, by Geo. L. and Cha's E. Otis, its solicitors, on whose motion it is ordered that this cause be and the same is hereby set down for hearing at the next general term of this court, to be held at the city of S't Paul, in said district, on the third Monday of June next, being the 21st day of June, A. D. 1875, at the opening of court on that day, or as soon thereafter as counsel can be heard.

28 And afterwards, at a general term of said court, held at S't Paul, in said district, to wit, the June term thereof, 1875, and on the 26th day of June, 1875, the following proceeding, among others, were had, viz:

THE NORTHWESTERN MUTUAL LIFE-INSURance Company
vs.
LORENZO ALLIS ET AL.

On motion of plaintiff, ordered that this cause be referred to H. E. Mann., esq., master, to report a decree to the court, pursuant to the prayer of plaintiff's bill, that said master in such decree allow the plaintiff for such taxes on the mortgaged premises, for the payment of which the plaintiff shall present proper receipts, and that a report of the amount due be also presented with the decree by said master.

29 Circuit court of the United States of America, ninth circuit, in and for the district of Minnesota. In equity.

THE NORTHWESTERN MUTUAL LIFE-INS. CO.
vs.
LORENZO ALLIS ET AL.
Chancery, page .

To the judges of the circuit court of the United States of America, ninth circuit, in and for the district of Minnesota:

In pursuance and by virtue of an order of this court made in the above cause, and bearing date the 28th day of June, in the year of our Lord one thousand eight hundred and seventy-five, by which it was referred to me, being one of the masters of this court, to compute, ascertain, and report the amount due to the complainant for principal and interest on the bond and mortgage mentioned and set forth in the bill

of complaint filed in the cause, I do respectfully certify and report that I have been accompanied by the council for the complainant and have computed and ascertained the sum of eleven thousand five hundred fifty-two dollars and seventy-seven cents ($11,552.77) to be the amount due the complainant in the cause on the said bond and mortgage for the principal and interest up to and including the date of this my report.

And I do further certify and report that the schedule hereunto annexed marked "A," and making a part of this my report, contains a statement and account of the principal and interest moneys due to the complainant as aforesaid, the period of the computation of the interest and its rate, and to which for greater certainty I refer.

All which is respectfully submitted.

July 1, 1875.

H. E. MANN,
Master in Chancery.

Schedule A referred to in the preceding report.

Principal sum	10,000 00
Interest on sum from Nov. 1, 1873, 1 y'r 8 mo's, at eight per cent. per annum	1,333 33
Taxes	19 44
Solicitor's fee	200 00
	$11,552 77

(Indorsed:) The N. W. Mutual Life-Ins. Co. vs. Lorenzo Allis et al. Master's report of amount due. Filed July 1, 1875. H. E. Mann, clerk.

30 And afterwards, at a general term of said court, held at Saint Paul, in said district, to wit, the June term thereof, 1875, and on the 6th day of July, 1875, the following proceeding was had, viz:

THE NORTHWESTERN MUTUAL LIFE-INSURance Company
vs.
LORENZO ALLIS, MARY C. ALLIS, HIS WIFE; Mary C. Allis De Con, and Franklin De Con, her husband; Merrill Ryder, John Parker, Charles Gentsch, Reuben Warner, W'm Shane, J. H. Pomeroy, H. F. E. Vitt, John Gebhardt, and Anna Gebhardt, his wife, and Franklin O. Day. } In equity.

This cause came on to be heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

That the report of H. E. Mann, a master in chancery of this court, to whom this cause was referred to ascertain and report the amount due to the plaintiff in this cause, upon the bond and mortgage described in the plaintiff's bill of complaint, whereby it appears there was due
31 the plaintiff upon its bond and mortgage, at the date of said report (July 1, 1875), the sum of eleven thousand five hundred and fifty-two $\frac{77}{100}$ dollars, be and the same is hereby in all respects confirmed; and that all and singular the mortgaged premises in the said bill of complaint described, to wit, all the following described real estate situ-

ate and lying in the county of Ramsey, and State of Minnesota, and known and described as follows, viz, the south one-third (⅓) of lots numbers thirteen and fourteen (13 and 14) in block number twelve (12) in Saint Paul proper, excepting therefrom the east eight (8) feet of said lot number fourteen (14) deeded to the city of Saint Paul, together with the privileges and appurtenances to the same belonging, or a sufficient part thereof to raise the money so reported to be due the plaintiff on its said bond and mortgage, with interest thereon from the date of said report to the day of said sale, besides the taxed costs of this suit and costs and disbursements of sale, be sold at public auction by or under the direction of a master in chancery of this court, unless the said defendants previous to the day of sale, shall pay to the plaintiff or his solicitor the said sum of eleven thousand five hundred and fifty-two $\frac{77}{100}$ dollars so reported to be due the plaintiff as aforesaid on its said
32 bond and mortgage, and interest thereon from the date of said report, together with the taxed costs of this suit and such other costs as shall have legally accrued under this decree.

And that the said premises be sold as aforesaid, either in separate parcels or together, as in the opinion of the master making the sale will best conduce to the interest of the parties concerned.

And that said sale be made according to the rules and practice of this court; that said master give notice of the time and place thereof by advertisement printed in some newspaper published in the city of S't Paul, in said district, at least once in each week for six successive weeks prior to the sale; that said plaintiff or any of the parties to this cause may purchase at said sale, and that said master shall execute to the purchaser or purchasers at said sale a certificate or certificates of said purchase or purchases of said mortgaged premises so sold, and, after the expiration of one year from the day of sale, unless said premises shall have been previously redeemed pursuant to law and the rules of this court, a deed or deeds of conveyance therefor.

And that after paying the expenses of said sale and retaining such sum as shall be him by this court for his compensation in
33 making the same, he shall pay out of the proceeds of said sale to the plaintiff or its solicitor the taxed costs of this suit, and the aforesaid sum of eleven thousand five hundred and fifty-two $\frac{77}{100}$ dollars so found due the plaintiff on its bond and mortgage aforesaid and interest thereon from the date of said report, or so much thereof as the purchase-moneys of said mortgaged premises will suffice to pay; and that said master take a receipt therefor and file the same with his report of the sale; and that he bring the surplus moneys, if any there be, into court without delay, to abide the further order of the court.

And that the said defendants and all parties claiming by, through, or under them, or either of them, do forever stand absolutely debarred and foreclosed of and from all lien, claim, interest, and equity of redemption of and in to the said mortgaged premises so sold, and every part and parcel thereof, unless the same be redeemed within one year as aforesaid.

And in case the mortgaged premises so sold shall not be redeemed within one year from the day of sale as aforesaid, that the purchaser or purchasers at said sale of said mortgaged premises be let into the possession thereof, and that the said defendants or any person who, since the commencement of this suit, have come into the possession of
34 the mortgaged premises so sold, under them or either of them, deliver possession thereof to such purchaser or purchasers on the

production of the deed of said master and a certified copy of the order confirming the report of sale.

And if, after the application of the proceeds of said sale as herein directed, any portion of the mortgage debt or of the interest thereon, secured by the mortgage in said plaintiff's said bill of complaint, shall remain unsatisfied, the said master shall specify the amount of such deficiency in his report of the sale; and on the coming in and confirmation of said report, the said defendant, Lorenzo Allis, who is personally liable for the payment of said mortgage debt, pay the same to the plaintiff, and that the plaintiff have execution therefor.

35 To the honorable the Supreme Court of the United States:

The petition of Lorenzo Allis respectfully shows to the court: That on the 6th day of July, A. D. 1875, a final decree was rendered in and by the circuit court of the United States for the district of Minnesota in a suit in equity then and there pending in said court, wherein the Northwestern Mutual Life-Insurance Company was plaintiff, and your petitioner, impleaded with others, was defendant; and that in said decree, and in the rendition thereof, and in the record and proceedings of said suit, there are manifest errors:

First. In this, to wit, that neither the bill of complaint nor the records and proceedings of said suit show that the said plaintiff has the capacity, right, and title to bring and maintain said suit.

Second. In this, to wit, that on the 28th day of June, A. D. 1875, a reference was made in said cause to H. E. Mann, esq., a master in chancery of said court, to examine, take an account of, and report to the court the amount due on the bond and mortgage described in said bill; and that on the 1st day of July, A. D. 1875, the said master, without, however, having previously assigned any time or place for

36 proceedings in said reference, or given any notice thereof to your petitioner or to his solicitor, made his report upon said reference and returned the same into the office of the clerk of said court, but that no entry of said return was ever made by the said clerk in the order-book of said court.

And that on the 6th day of July, A. D. 1875, and without any notice of said report being previously given to your petitioner, and before your petitioner or any of the other defendants had an opportunity to except to said report, and without any exceptions thereto or hearing thereupon, the said report in all things was by the said court, and in and by the said decree, confirmed.

And that neither in the matter of said reference, nor in the matter of said report, nor in the matter of the said confirmation thereof, did your petitioner have any notice of said proceedings, nor any opportunity to be heard thereon.

Third. In this, to wit, that in and by the terms of the said decree your petitioner has only one year from the day of the sale within which he may redeem the premises by said *said* decree ordered to be sold,

37 whereas by the express law of the land he is entitled to redeem said premises from said sale at any time within one year from the day of the confirmation of said sale.

And your petitioner further says that the matters in dispute in said cause, exclusive of costs, exceeds the sum of five thousand dollars.

Wherefore your petitioner appeals from the said decree to the Supreme Court of the United States, and prays that the decree aforesaid,

for the errors aforesaid and other errors in the record and proceeding aforesaid, may be reversed.

LORENZO ALLIS.

FREDERICK ALLIS.
Solicitor for Petitioner.

(Indorsed:) U. S. cir. c't. N. W. M. Life-Ins. Co. vs. Lorenzo Allis. Petition for appeal and assignment of errors. Filed August 19, 1875. H. E. Mann, clerk. Frederick Allis, solicitor.

38 Circuit court of the United States for the district of Minnesota.

THE NORTHWESTERN MUTUAL LIFE-INSURance Company
vs.
LORENZO ALLIS AND OTHERS. } In equity.

And now, on this 31st day of August, A. D. 1875, comes Lorenzo Allis, one of the defendants in this cause, and showing to the court that the matter in dispute herein, exclusive of costs, exceeds the sum of five thousand dollars, and that he has filed herein his petition for an appeal to the Supreme Court of the United States from the final decree heretofore rendered herein, which contains an assignment of errors and a prayer for reversal, and furnishing the security required by law where the appeal is a supersedeas, moves that an appeal be allowed from the said final decree to the Supreme Court of the United States:

Wherefore it is ordered that the appeal prayed for be, and the same is hereby, allowed, and that the appellant serve the usual citation according to law.

R. R. NELSON,
Judge.

(Indorsed:) Circuit court United States. Dist. of Minn. N. W. Mut. Life-Ins. Co. vs. L. Allis et als. Order allowing appeal. Filed Sept. 1, 1875. H. E. Mann, clerk. Frederick Allis, solicitor for appellant.

39 United States circuit court, district of Minnesota.

THE NORTHWESTERN MUTUAL LIFE-INSURance Company
vs.
LORENZO ALLIS AND MARY C. ALLIS, his wife; Franklin De Con and May C. Allis De Con, his wife; Merrill Ryder, John Parker, Charles Gentsch, Reuben Warner, W'm Shane, Franklin O. Day, J. H. Pomeroy, Henry F. E. Vitt, John Gebhardt, and Anna Gebhardt, his wife. } In equity.

It is hereby stipulated and agreed between the complainant and the defendants, John Gebhardt and Anna Gebhardt, his wife, two of the defendants above named, that, for all the purposes of this action, the following statement of facts is admitted to be true, and shall be read on the final hearing as part of the case herein, and said statement contains all the proofs on the part of said defendants, and the case herein shall be heard upon the merits on said statement, the same in all respects as

though said defendants had closed their proofs under the rules of court in such case provided, viz:

40 1. That all and singular the allegations in the complainant's bill of complaint are true.

2. That on the first day of April, A. D. 1873, the defendant, Lorenzo Allis, executed, under his hand and seal, in due form of law, an instrument in writing, whereby he did lease, let, and demise to one Ben Endrehs that part or portion of said mortgaged premises known and designated as follows: The westerly twenty-eight feet of the southerly one-third of lot 13, in block 12 of Saint Paul proper, according to the plat thereof recorded in the office of the register of deeds for said county of Ramsey, having a front of 28 feet on Fifth street, and a depth of fifty feet therefrom, for a term of four years, at a certain agreed rent, all of which will more fully appear from a copy of said lease hereto attached and made a part of this statement, and marked "Exhibit A."

That afterwards, and on the 11th day of February, 1874, the said Ben Endrehs departed this life, leaving the defendant, Anna Gebhardt (referred to in the complainant's bill of complaint as the wife of the defendant, John Gebhardt), his widow, and May Endrehs, minor child and heir at law of the said Ben Endrehs, and child of the defendant, Anna Gebhardt, by the said Endrehs, in the possession of said leasehold premises.

41 That afterwards, on the 22d day of October, A. D. 1874, the said widow of the said Ben Endrehs intermarried with the defendant herein, the said John Gebhardt, and that from the decease of the said Endrehs the defendant Anna Gebhardt, wife of the defendant John Gebhardt, together with said minor child, have continued to occupy said leasehold premises as the widow and minor child of said Ben Endrehs, deceased, as a homestead, under and by virtue of section one of the law relating to homestead exemption in the State of Minnesota.

That the said Ben Endrehs, deceased, was, when living, entitled to the benefit of said act, and that his said widow, defendant as aforesaid, has continued without interruption to occupy the said premises, and that said minor child has in like manner occupied the said premises, and is now under the age of thirteen years.

That said lease is in full force and virtue, and the conditions thereof have been fully kept and performed; and the said Allis has always received the rents from the said John Gebhardt and Anna Gebhardt according to the terms of said lease, and of all which acts the said Lorenzo Allis and his wife Mary C. Allis had full notice.

In addition to the foregoing, the following statement of facts are admitted to be true, but the complainant objects to the same on the

42 ground that the same are irrelevant, immaterial, and incompetent, and the same are to be considered as evidence, provided said objection is not well founded. If said objection is well founded, then said statement is to be excluded, viz:

That on the 16th day of December, 1874, at a public sale of lands in Ramsey County for the sale of lands delinquent therein for the taxes of a date prior thereto, that is to say, for the year 1873, the defendant, John Gebhardt, became the purchaser of the north seventy-five feet of the south one-third of said premises for the sum of seventeen and $\frac{67}{100}$ dollars, and received on such purchase and as evidence thereof the auditor's certificate thereof, which said certificate of sale is duly recorded in book 66 of deeds, at page 7, in said office of register of deeds for the county of Ramsey aforesaid; a copy of which certificate

of tax-sale is hereunto attached and made a part of this statement, and marked "Exhibit B."

It is further admitted that the aforesaid lease is subsequent to the lien of the complainant's mortgage as set forth and alleged in his bill of complaint herein.

GEO. L. AND CHA'S E. OTIS,
Sol'rs for Complainant.
JACOB MAINZER AND
CHA'S S. BRYANT,
Sol'rs for Defendants John Gebhardt and Anna Gebhardt, his wife.

S'T PAUL, *M'ch* 15, 1875.

43 EX. A.

This agreement, made this first day of April, in the year of our Lord one thousand eight hundred and seventy-three, by and between Lorenzo Allis, of Saint Paul, Minn., party of the first part, and Ben Endrehs, of Saint Paul, Minn., party of the second part, witnesseth:

That the said party of the first part, in consideration of the rents and covenants hereinafter mentioned, and to be paid and performed by the said party of the second part, the said party of the first part hath demised, leased, and let, and by these presents does demise, lease, and let, unto the said party of the second part, the following-described premises, to wit:

The westerly 28 feet of the southerly one-third of lot thirteen (13) in block twelve (12) of S't Paul proper, according to the plat thereof on record in the office of the register of deeds of said county of Ramsey, the said premises being situate in said Ramsey County, in the State of Minnesota, and having a front of twenty-eight feet (28 f't) on Fifth st., and a depth of fifty feet therefrom.

To have and to hold the above-rented premises unto the said party of the second part, his heirs, executors, administrators, and assigns, for and during the full term of four years from and after the 1st day of April, A. D. 1873.

And the said party of the second part, for himself, heirs, executors, administrators, and assigns, agree to and with the said
44 party of the first part, to pay to him, his heirs, executors, administrators, or assigns, as rent for the above-mentioned premises, the sum of two hundred dollars for the first year, and three hundred dollars for each of the remaining years, in equal quarterly instalments, in advance for each quarter, for and during the full term of this lease, at the office of Lorenzo Allis.

And it is further agreed by and between the parties as follows: That should the said party of the second part, his heirs, executors, administrators, or assigns, fail to make the above-mentioned payments as herein specified, or to pay any of the rent aforesaid when due, or fail to fulfill any of the covenants herein contained, then and in that case it shall be lawful for the said party of the first part, his heirs, executors, administrators, or assigns, to re-enter and take full and absolute possession of the aforesaid premises, and hold and enjoy the same fully and absolutely, without such re-entering working a forfeiture of the rents to be paid and the covenants to be performed by the said party of the second part, his heirs, executors, administrators, or assigns, for the full term of this lease.

And the said party of the second part also covenant and agree to and with the said party of the first part, not to sublet the above-

45 rented premises or any part thereof, nor assign said lease during the full term of this lease, without first obtaining the consent of the said party of the first part, his heirs, executors, administrators, or assigns thereto, and that he will, at the expiration of the time herein recited, quietly yield and surrender the aforesaid rented premises to the said party of the first part, his heirs, executors, administrators, or assigns, in as good condition and repair as when he took them, reasonable wear and tear and damage by the elements alone excepted.

It is agreed that said party of the second part may, at the expiration of this lease, remove the building now situate on said premises, provided that all the rents accrued and to accrue hereon shall be fully paid, and not otherwise.

In testimony whereof both parties have hereunto set their hands and seals this first day of April, A. D. 1873, in duplicate.

LORENZO ALLIS. [SEAL.]
BEN ENDREHS. [SEAL.]

Signed, sealed, and delivered in the presence of (the words "nor assign said lease" interlined in the 38th line before execution—

W. P. MURRAY.
JAMES B. BEALS.

46 Ex. B.

I, S. Lee Davis, the auditor of the county of Ramsey, State of Minnesota, do hereby certify, that at the sale of lands pursuant to the real-estate-tax judgment entered in the district court, in the county of Ramsey, on the sixteenth day of November, 1874, in proceedings to enforce the payment of taxes delinquent upon real estate for the county of Ramsey, which sale was held at Saint Paul, in said county of Ramsey, on the sixteenth day of December, 1874, the following-described piece or parcel of land, situate in said county of Ramsey, State of Minnesota, to wit: Improvements on north seventy-five feet (N. 75 f't) of south one-third (S. ⅓), block twelve (12), in S't Paul proper, to Saint Paul, was first offered to the bidder who would pay the amount for which the same was subject to be sold for the shortest term of years in said piece or parcel, and no person having offered to pay such amount for a term of years, I did sell the fee of said piece or parcel of land to J. N. Gebhardt, for the sum of seventeen and $\frac{07}{100}$ dollars, that being the highest sum bid therefor; and he having paid said sum, I do therefore, in consideration thereof, and pursuant to the statute in such case made and pro-
47 vided, convey the said piece or parcel of land in fee-simple to the said J. N. Gebhardt, his heirs and assigns, forever, subject to redemption as provided by law.

Witness my hand and official seal this sixteenth day of December, 1874.

[AUDITOR'S SEAL.] S. LEE DAVIS,
County Auditor.

(Indorsed:)

OFFICE OF REGISTER OF DEEDS,
County of Ramsey, Minnesota:

I hereby certify that the within sale certificate was filed in this office for record on the 25th day of January, A. D. 1875, at 11 o'clock a. m., and was duly recorded in book 66 of deeds, page 7.

REGISTER'S SEAL. THEODORE SANDER,
Register of Deeds,
By HENRY O'GORMAN,
Deputy.

(Indorsed:) 342. U. S. circuit court. Dis't of Minnesota. In equity. The Northwestern Mutual Life-Insurance Company vs. Lorenzo Allis et al. Agreed statement of facts as to defendants Gebhardt and wife. Filed March 19, 1875. H. E. Mann, clerk.

48 UNITED STATES OF AMERICA, *ss:*

To the Northwestern Mutual Life-Insurance Company, greeting:

Whereas Lorenzo Allis has appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the district of Minnesota in a cause therein pending wherein you, the said Northwestern Mutual Life-Insurance Company, were plaintiff, and he, the said Lorenzo Allis, impleaded with others, was defendant, & has given the security required by law where the appeal is a supersedeas:

You are therefore hereby cited & admonished to be & appear before the said Supreme Court next to be holden at the city of Washington, in the District of Columbia, on the second Monday in October next, & then & there to answer to said appeal, & to show cause, if any there be, why the said decree should not be reversed, & speedy justice should not be done in the premises.

Witness the honorable Rennselaer R. Nelson, one of the judges of the said circuit court of the United States for the district of Minnesota, at the city of Saint Paul, in the said district, this 31 day of August, A. D. 1875.

R. R. NELSON,
Judge.

49 Service of a copy of the within & foregoing citation on us this 1st day of September, A. D. 1875, is hereby admitted.

Solicitors for the Plaintiffs & Respondents.

(Indorsed:) 342. N. W. Mut. Life-Ins. Co. v. L. Allis, impleaded, &c. appellant. Citation. A copy of the within citation served on us personally Sept. 1, 1875. Geo. L. & C. E. Otis, sol'rs for compl'ts. Filed Sept. 1, 1875. H. E. Mann, clerk.

50 UNITED STATES OF AMERICA,
District of Minnesota, ss:

I, H. E. Mann, clerk of the circuit court of the United States of America for the district of Minnesota, do hereby certify that the foregoing pages, numbered from one to forty-seven, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of The Northwestern Mutual Life-Insurance Company, plaintiff, against Lorenzo Allis and Mary C. Allis, his wife; and Mary C. Allis De Con and Franklin De Con, her husband; Merrill Ryder, John Parker, Charles Geutsch, Reubin Warner, William Shane, J. H. Pomeroy, H. F. E. Vitt, John Gebhardt and Gebhardt, his wife, and Franklin O. Day, defendants, and also of all the depositions, exhibits, and proofs taken therein, as appears from the original files and records of said court. And I do further certify and return that I have annexed to said transcript, and do hereby transmit therewith, the original citation on appeal, together with the proof of service thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the said court to be hereunto affixed, at the city of Saint Paul,

in the district of Minnesota, this eleventh day of October, in the year of our Lord one thousand eight hundred and seventy-five, and of our Independence the one hundreth year.

[L. S.] H. E. MANN, *Clerk.*

(Indorsed:) United States circuit court, district of Minnesota. The Northwestern Mutual Life-Insurance Company vs. Lorenzo Allis et al. Return to Supreme Court on appeal.

(Indorsement on cover:) No. 286. Lorenzo Allis, appellant, vs. The Northwestern Mutual Life-Insurance Co. Minnesota, C. C. U. S. Filed 23d October, 1875.

SUPREME COURT

OF THE

UNITED STATES.

LORENZO ALLIS,

Appellant,

versus

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY,

Respondent.

BRIEF OF APPELLANT.

H. J. HORN,

Of Counsel for Appellant.

Pioneer Press.

Supreme Court of the United States.

LORENZO ALLIS,

Appellant,

vs.

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY.

APPEAL FROM CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

BRIEF OF COUNSEL FOR APPELLANT.

STATEMENT OF CASE.

On the 21st day of December, A. D. 1874, the respondent filed its bill of complaint against the appellant and others, praying for the foreclosure of a mortgage executed by the

appellant to the respondents, and for the sale of the mortgaged premises.

Record, pp. 1–5.

The subpœna was duly issued and served on the appellant on December 26th, 1874, returnable on the first Monday in February, 1875.

Record, pp. 5–6.

At rules on February 1st, 1875, the appellant entered his appearance.

Record, p. 9.

At rules on the 2d day of March, 1875, the solicitors of the respondent entered default against the appellant, and took their bill as confessed by him.

Record, p. 10.

At rules on June 7th, 1875, on motion of respondents' solicitors, the cause was set down for hearing at the General Term to be held June 21st, 1875.

Record, p. 11.

At the General Term, and on June 26th, 1875, on motion of the respondent's solicitors, an order was entered referring the cause to H. E. Mann, Esq., master in chancery, *to report a decree to the court*, and also to report the amount due upon said mortgage.

Record, page 11.

On July 1st, 1875, the said Master filed in court his report, showing the amount due on said mortgage.

Record, pp. 11 and 12.

On July 6th, 1875, a decree was entered in said cause, in and by which, among other things, the said Master's report was confirmed and the said mortgage premises were ordered to be sold and a deed of conveyance was directed

to be made to the purchaser after the expiration of one year from the *day of sale*, unless said premises should have been previously redeemed, and the appellant and all persons claiming under him were foreclosed of all equity of redemption and interest in and to said premises, unless they should be redeemed within one year after the day of said sale, and the possession of said premises was directed to be delivered to the said purchaser, unless the said premises should be redeemed as aforesaid.

Record, pp. 12–14.

On August 31st, 1875, this appellant took his appeal, with a supersedeas from said decree.

Record, p. 15.

ASSIGNMENT OF ERRORS.

I.

The reference was made to the Master in this cause on June 26th, 1875, and he filed his report thereupon on July 1st following. It does not appear, and it was not the fact, that the Master assigned any time for the proceedings in said reference, or gave any notice thereof to this appellant, or to any of the defendants, or to their solicitors, as required by rule No. 75 of the Equity Rules. This was error on the part of the Master.

II.

The day of the return of said report into court was not entered by the clerk in the Order Book, as required by rule 83 of the Equity Rules.

The said report was confirmed by the court on the 6th day of July, 1875, without any notice thereof to this appellant, and before this appellant, or any of the other defendants, had an opportunity to except to said report, and without any exceptions thereto, or hearing thereupon—all of which was in violation of the provisions of said rule 83.

This was error on the part of the court.

III.

The decree in this cause allows only one year from the *day of sale*, for the redemption of the premises ordered to be sold, and forecloses all equity of redemption or interest in the same, and directs the delivery of the possession thereof to the purchaser, unless the said premises should be redeemed within the said year; whereas, the statute of the State of Minnesota, in such case made and provided, gave one year from the day of the *confirmation* of said sale, within which to make such redemption.

This was error on the part of the court.

POINTS AND AUTHORITIES.

I.

1. This cause having, on motion of the plaintiff's solicitors been referred to the Master to report a decree therein, and also to report amount due on the bond and mortgage, they could not lawfully cause a decree to be entered until the coming in of the Master's report and its due confirmation.

Record, p. 11, folio 28.

2. It was the duty of the Master on this reference to assign a time and place for his proceedings therein, and to give, due notice thereof to this appellant.

Equity Rules, No. 75.

This duty the Master failed to perform, and proceeded to execute the reference, assisted by the solicitors of the plaintiff, and without giving any notice thereof to this appellant's solicitor, and in his absence, and on the 1st day of July, 1875, six days after the order of reference, filed in court his report.

Record pp. 11 and 12, folio 29.

3. The day of the return was not entered by the Clerk in the Order Book as required by Equity Rule, No. 83, and hence no notice of the coming in of the Master's report was given.

But, in any event, by Rule 83 this appellant had one month from the time of the filing of the Master's report

within which to file exceptions to the same. Nevertheless, on the 6th day of July, five days after the filing of the Master's report, and before any notice of such filing had been given, and before any exceptions to said report had been filed, and long before the time for filing such exceptions had expired, the plaintiff's solicitors caused a decree to be entered in this cause, and the said Master's report to be thereby confirmed.

This was clearly erroneous. The appellant, notwithstanding he had confessed the allegations of plaintiff's bill, was entitled to his rights upon the bill as confessed.

He had the right to be present and to be heard in the proceedings upon the reference.

He had the right to due notice of the return of the Master's report into court.

He had the right to file exceptions to this report at any time during one month after the return thereof into the clerk's office.

All these rights were denied the appellant by the proceedings taken at the instance of the respondent's solicitors, manifestly to the great prejudice of the appellant.

II.

The decree is erroneous in that it allows only one year from "the day of sale" within which the mortgaged premises may be redeemed from the sale, and declares this appellant and all the other defendants foreclosed of all equity of redemption or other interest in said premises, and directs the delivery of the possession thereof to the

purchaser, unless the said premises shall be redeemed within said time.

Now the statute of Minnesota, in force when the bond and mortgage set up in the respondent's bill were executed and also when this suit was instituted and said decree was entered, declares "that the mortgagor or those claiming under him shall have one year after the date of the order of confirmation in which to redeem the premises sold or any separate part thereof."

Revision of 1866, p. 566, chap. 81, sect. 31.

Said statute also leaves the title and the possession of the mortgaged premises in the mortgagor until the expiration of the time for redemption.

Revision of 1866, p. 566, chap. 81, sect. 33.

Ibid, p. 540, chap. 77, section 11.

Ibid, p. 564, chap. 81, sec. 15, and p. 566, sec. 32.

These provisions are rules of property, and should have been administered and enforced, and not disregarded and violated by the decree.

The decree should be reversed, or at least, so modified as to conform with the provisions of the statutes of Minnesota above cited.

H. J. HORN,
Of Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES.

No. 286.

LORENZO ALLIS,
Appellant,
vs.
THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY,
Appellee.

Appeal from the Circuit Court of the United States for the District of Minnesota.

APPELLEE'S BRIEF.

L. S. DIXON,
Solicitor for Appellee.

Burdick & Armitage, Printers, Milwaukee, Wis.

Supreme Court of the United States.

No. 286.

LORENZO ALLIS,
Appellant,
vs.
THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY,
Appellee.

Appeal from the Circuit Court of the United States for the District of Minnesota.

APPELLEE'S BRIEF.

The bill in this case was filed Dec. 21st, 1874. It was for the foreclosure of a mortgage executed by the appellant and his wife to the appellee, on Dec. 12th, 1868.

The appellant appeared, but failed to answer. His default was regularly entered, and the bill was taken *pro confesso*. At the next term, a decree of foreclosure and sale was entered, from which this appeal is taken. (For decree see Record, page 12.)

In the petition for an appeal, errors are alleged as follows:

"*First.* In this, to-wit: that neither the bill of complaint nor the records and proceedings of said suit show that the said plaintiff has the capacity, right, and title to bring and maintain said suit.

"*Second.* In this, to-wit: that on the 28th day of June, A. D. 1875, a reference was made in said cause to H. E. Mann, Esq., a master in chancery of said court, to examine, take an account of, and report to the court the amount due on the bond and mortgage described in said bill; and that on the 1st day of July, A. D. 1875, the said master, without, however, having previously assigned any time or place for proceedings in said reference, or given any notice thereof to your petitioner, or to his solicitor, made his report upon said reference, and returned the same into the office of the clerk of said court; but that no entry of said return was ever made by the said clerk in the order book of said court.

"And that on the 6th day of July, A. D. 1875, and without any notice of said report being previously given to your petitioner, and before your petitioner or any of the other defendants had an opportunity to except to said report, and without any exceptions thereto or hearing thereupon, the said report in all things was by the said court, and in and by the said decree, confirmed.

"And that neither in the matter of said reference, nor in the matter of said report, nor in the matter of the said confirmation thereof, did your petitioner have any notice of said proceedings, nor any opportunity to be heard thereon.

"*Third.* In this, to wit: that in and by the terms of the said decree your petitioner has only one year from the day of the sale within which he may redeem the premises by said decree ordered to be sold; whereas, by the express law of the land, he is entitled to redeem said premises from said sale at any time within one year from the day of the confirmation of said sale." (Record, p. 14.)

We assume that the foregoing propositions are the errors to be assigned and relied upon at the hearing.

I.

The first objection goes to the jurisdiction of the court. The bill describes the complainant as "a corporation created, constituted and organized under the laws of the State of Wisconsin, and a citizen of the State of Wisconsin."

A suit by or against a corporation is deemed to be brought by or against the members of the corporation; and the members are, by legal presumption, held to be citizens of the state creating the corporate body. The averment of the bill, that the complainant corporation was "created, constituted

and organized under the laws of the State of Wisconsin," is a sufficient averment of citizenship.

Louisville Railroad Co. v. Letson, 2 How. 497.
Marshall v. Baltimore & Ohio Rd. Co. 16 How. 314.
Covington Drawbridge Co. v. Shepherd et al. 20 How. 227.
Philadelphia, Wilmington & Baltimore Rd. Co. v. Quigley, 21 How. 202.
Ohio & Miss. Rd. Co. v. Wheeler, 1 Black 286.

II.

It is sought, by the second alleged error, to bring up matters for review, which relate merely to the regularity of the proceedings intermediate the default and the final decree.

1. The proceedings were entirely regular. The bill having been taken as confessed, the complainant had the right to proceed in the cause *ex parte*, to final decree. The defendant was not at liberty to go before the master without a special order.

Equity Rule 18.
McMicken v. Perin, 18 How. 507.

2. The only question to be considered on this

appeal, is, whether the allegations of the bill are sufficient to support the decree.

Masterson v. Howard, 18 Wall. 99.

3. It is not claimed that the master's report is, in any respect, erroneous. The decree is in strict conformity with the report, and as to all matters embraced in the appellant's second objection, the averments of the bill fully support the decree. (See, as to amount due, Bill, Record p. 3–4; Master's Report, p. 11–12; Decree, p. 12.)

III.

It is claimed under the third objection, that the decree is erroneous in not conforming to the State law, in respect to the right of redemption.

That the force of this point may be appreciated, we call attention to the following provisions of the Statute of Minnesota. We copy from Bissell's compilation of 1873:

Chap. LXI, Title I, p. 781.

"*Sec. 1. Forms of actions abolished—one form adopted, called a civil action.* The distinction between actions at law and suits in equity, and the forms of all such actions and suits, are abolished; and there shall be in this state

but one form of action for the enforcement or protection of private rights, and the redress of private wrongs, which shall be called a civil action."

Chap. XLIII, Title V, Art. I, p. 900.

"Sec. 104 (1, as amended by act of February 17, 1873). *Mortgage foreclosed by advertisement, when.* Every mortgage of real estate containing therein a power of sale, upon default being made in any condition of such mortgage, may be foreclosed by advertisement within ten years after the maturity of such mortgage or the debt secured thereby, in the cases and in the manner hereafter specified: *provided*, that mortgages that have been foreclosed, or where an attempt has been made to foreclose the same, may be foreclosed previous to the first day of October, A. D. one thousand eight hundred and seventy-three.

"Sec. 116 (13). *Who may redeem and when.* The mortgagor, his heirs, executors, administrators or assigns, whose real property is sold in conformity to the provisions of this chapter, may, within twelve months after such sale, redeem such property as hereinafter provided, by paying the sum of money for which the same was sold, together with interest on the same, at the rate of seven per cent. per annum, from the time of such sale."

Chap. XLIII, Title V, Art. II, p. 905.—Foreclosure by action.

"Sec. 126 (24). *Action, how governed.* Actions for the foreclosure of mortgages shall be governed by the same rules and provisions of statute as civil actions, except as herein otherwise expressly prescribed.

"Sec. 133 (31). *Who may redeem—time and manner of redemption.* The mortgagor, or those claiming under him, shall have one year after the date of the order of confirmation in which to redeem the premises sold, or any separate portion thereof, by paying the amount bid therefor, with

interest thereon from the day of sale, and judgment creditors may redeem in the order and manner specified in title one of this chapter: *provided*, that no creditor shall be entitled to redeem, unless within the year allowed for redemption he files notice of his intention to redeem in the office of the district court where the judgment is entered.

"Sec. 142 *(40, added by act of March 7, 1870.) Strict foreclosure, when final decree may be rendered.* Nothing contained in this chapter shall be so construed as to prevent judgment being given for the strict foreclosure of a mortgage, in cases when such remedy is just or appropriate; but in case of strict foreclosure no final decree of foreclosure shall be rendered until the lapse of one year after the judgment adjudging the amount due on such mortgage."

We understand all the foregoing provisions were in force at the dates of filing the bill and entering the decree, and that all, except sec. 104, p. 900, and sec. 142, p. 907, were in force at the date of the mortgage—Dec. 12, 1868. Instead of said sections 104 and 142, sec. 1, chap. 81, p. 562, and sec. 23, chap. 81, p. 565, revision of 1866, were in force. These sections, from the revision of 1866, are as follows:

"Sec. 1. Every mortgage of real estate, containing therein a power of sale, upon default being made in any condition of such mortgage, may be foreclosed by advertisement, in the cases and in the manner hereinafter specified.

"Sec. 23. There shall be but one method of foreclosing mortgages in court, and in every case the mortgaged

premises or some part thereof, shall be sold at public auction to the highest bidder, to satisfy the debt secured, with costs and disbursements."

It appears from the foregoing provisions, that the Statutes of Minnesota prescribe three different periods of redemption from sales on mortgage foreclosures—the first being the period of "twelve months after such sale," the second, "one year after the date of the order of confirmation," and the third, "one year after the judgment adjudging the amount due on such mortgage." The statutes prescribing the first and second period of redemption were in force at the date of the mortgage.

It also appears that "the distinction between actions at law and suits in equity, and the forms of all such actions and suits are abolished."

The appellant claims that the decree is bad, on account of the fact, that by its terms, the year's redemption runs from the date of sale, instead of the date of an order of confirmation.

This proposition cannot be maintained, because:

1. If the decree had wholly barred the right to redeem after sale, it would, under the decisions of

this court, in the absence of a rule adopting the statute, be affirmed. We are not aware of any such rule, and understand none exists.

The case of *Bronson v. Kinzie*, 1 *How.* 311, arose under a similar statute of Illinois. The mortgage involved in that case was executed prior to the passage of the law; and the circuit court, after its passage, and before final hearing, made rules adopting, or partially adopting, the provisions of the statute. The court, without passing upon the force or applicability of the rules, dispose of the case by holding the statute invalid, upon the ground that it "so altered the remedy as to impair the obligation of the contract." In the opinion of the court, Taney, C. J., says, in reference to the effect of such legislation upon proceedings in the Federal courts:

"The laws of a state regulating the process of its courts, and prescribing the manner in which it shall be executed, of course, do not bind the courts of the United States, whose proceedings must be governed by the acts of Congress. The act of 1792, however, adopted the process used in the state courts, as it stood in 1789; and, since then, the act of 1828, on the same subject, has been passed; and the 3d section of this law directs that final process issued on judgments and decrees in any of the courts of the United States, and the proceedings thereupon, shall be the same, except their style, in each state, respectively, as were then used in the courts of such state, and authorizes the courts of the United States, if they see fit, in their discretion, by rules of court, so far to alter final process as to

conform the same to any change which might afterwards be adopted, by the legislatures of the respective states, for the state courts. Any acts of a state legislature, therefore, in relation to final process, passed since 1828, are of no force in the courts of the United States, unless adopted by rules of court, according to the provisions of this act of Congress. And, although such state laws may have been so adopted, yet they are inoperative and of no force, if in conflict with the Constitution, or an act of Congress."

Justice McLean, upon the question of the validity of the statute, in his dissenting opinion, says, in reference to the statute and rules:

"The act of Illinois, of the 27th February, 1841, does not apply to the case under consideration. The rule of the circuit court adopting that act, limits it to executions on judgments at law. It can have no application, therefore, to any proceeding in chancery. The only rule adopted in relation to a chancery proceeding is that which gives the mortgagor a year within which to redeem the premises sold, on the payment of the purchase money and ten per cent. interest, agreeably to the 8th section of the act of 19th February, 1841, and that rule was to operate only in decrees of foreclosure and sale, where a different order was not made. So that, in fact, no positive rule was adopted in Illinois by the circuit court, in relation to sales of mortgaged premises under a decree.

"By the rules regulating chancery proceedings, adopted by this court at its last term, it is supposed the above rule and all others regulating the practice in chancery was rescinded. But this is not material. The points certified would be answered by saying, that the acts of the legislature referred to can have no operation in the case; as

no state law can govern the proceedings of a chancery court of the United States."

The case of Noonan vs. Lee, 2 Black 499, presented the question as to the power of the circuit court, in a foreclosure decree, to direct the mortgagor to pay the balance which might remain unsatisfied after exhausting the proceeds of the mortgaged premises. Justice Swayne, in the opinion of the court, says:

"The equity jurisdiction of the courts of the United States is derived from the Constitution and laws of the United States. Their powers and rules of decision are the same in all the states. Their practice is regulated by themselves, and by rules established by the supreme court. This court is invested by law with authority to make such rules. In all these respects they are unaffected by state legislation."

The court held:

"That in the absence of a rule of this court authorizing it to be done, it was not competent for the court below to make such an order."

In the case of *Payne vs. Hook*, 7 *Wall.* 425, the court use this language:

"We have repeatedly held 'that the jurisdiction of the 'courts of the United States over controversies between 'citizens of different states, cannot be impaired by the laws 'of the states, which prescribe the modes of redress in their 'courts, or which regulate the distribution of their judicial

'power.' If legal remedies are sometimes modified to suit the changes in the laws of the states, and the practice of their courts, it is not so with equitable. The equity jurisdiction conferred on the Federal courts is the same that the high court of chancery in England possesses; is subject neither to limitation or restraint by state legislation, and is uniform throughout the different states of the Union."

2. Although it was competent for the circuit court to have ordered an absolute sale, it nevertheless did not. The right to redeem, so far as the statute can, with reason, be claimed to confer a right, as distinguished from the remedy, is given by the decree.

Assuming that the legislature intended that a year for redemption should be given, as a right incident to the mortgage, yet by the terms of the statute the time when the year should begin, whether at the date of the decree, of the sale, or of the order of confirmation, depends upon the character of the proceedings which might be instituted to enforce the contract. It is manifest, therefore, that so much of the law as fixes the time from which the year's redemption is to run, pertains merely to the remedy, and does not in any manner affect the obligation of the contract; and as the mortgagee did not resort to either of the modes provided by the statute, but, instead, saw fit to invoke the jurisdiction of the Federal court, that court (waiving the question of power to disregard the stat-

ute) might properly, in view merely of the difference between its practice and the special proceedings prescribed by the statute, fix the time from which the year's redemption should run, at either of the dates mentioned in the statute, or at any other time within the limits of those dates.

3. If this statute is to be construed in accordance with the decisions of the supreme court of Minnesota, it must be held to relate merely to the remedy, and as not conferring any right which the courts of any other jurisdiction than that of the state would be bound to regard. The appellant is not in a position to complain of such construction.

Stone v. Basset, 4 Minn. 298.
Heyward v. Judd, 4 Minn. 483.
Turrell v. Morgan, 7 Minn. 368. See p. 373-4.

It is respectfully submitted that the decree of the circuit court should be affirmed.

L. S. DIXON,
Solicitor for Appellee.